### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

SAMUEL KATZ, et al., individuals, on their	)
own behalf and on behalf of all others	)
similarly situated,	)
Plaintiffs,	)
	)
v.	) Case No. 1:18-cv-10506-ADB
	)
LIBERTY POWER CORP., LLC, et al.,	)
	)
Defendants.	)
	)

# DEFENDANTS LIBERTY POWER CORP., LLC AND LIBERTY POWER HOLDINGS, LLC'S MOTION TO SET A SUMMARY JUDGMENT BRIEFING SCHEDULE

Defendants Liberty Power Corp., LLC and Liberty Power Holdings, LLC (collectively, "Liberty Power" or "Defendants"), by and through counsel, move the Court for the entry of an order setting a summary judgment briefing schedule. In support thereof, and as good cause for the relief sought, Liberty Power states as follows:

- 1. On January 9, 2019, Liberty Power filed a motion to dismiss Plaintiffs' Second Amended Complaint. ECF Nos. 118, 119. Plaintiffs filed an opposition on February 13, 2019, ECF No. 124, and Liberty Power filed a Reply on March 15, 2019. ECF No. 130.
  - 2. The motion to dismiss remains fully briefed and pending.
- 3. On February 27, 2019, the Court bifurcated discovery and ordered that if Defendants intend to file for summary judgment, they shall do so by June 21, 2019.
- 4. There are issues in the motion to dismiss that overlap with Defendants planned summary judgment filing. For example, Defendants argue Plaintiff Lynne Rhodes does not have standing to pursue her claims because the alleged telephone calls were made to her father's telephone number. Mem. in Supp. of Mot. to Dismiss at 4-6. The overlap of these issues makes

briefing summary judgment without a ruling on the motion to dismiss duplicative, inefficient, and not in the interests of judicial economy.

5. For this good cause, Defendants move the Court for the entry of an Order setting the deadline for filing their summary judgment brief within 45 days of the Court's entry of an Order on Defendants' pending motion to dismiss.

**WHEREFORE**, Defendants respectfully request the Court enter an Order setting the deadline for filing their summary judgment brief within 45 days of the Court's entry of an Order on Defendants' pending motion to dismiss.

Respectfully submitted,

# LIBERTY POWER CORP., LLC, LIBERTY POWER HOLDINGS, LLC,

By their attorneys,

/s/ Jeffrey P. Brundage

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June 5, 2019

## **LOCAL RULE 7.1(a)(2) CERTIFICATE OF COMPLIANCE**

I, Jeffrey P. Brundage, counsel for Defendants, hereby certify that on June 5, 2019, I emailed a draft version of this motion to counsel for Plaintiffs who neither consented nor opposed the relief sought herein.

/s/ Jeffrey P. Brundage Jeffrey P. Brundage

#### **CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2019, the foregoing document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF):

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